IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

RFA No.45 of 1998.
Date of decision: 03.09.2007.

Farm Fresh Foods Private Ltd. & Anr. **….Appellant.**

Versus

State of H.P. & Others. **….Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?

For the Appellants: **Mr.Bimal Gupta, Advocate.**

For Respondents 1, 3 to 8: **Mr.Rajan Dewan, Additional Advocate General**

Dev Darshan Sud,J.

The plaintiff has preferred this appeal against the judgment of the learned District Judge, dismissing the suit preferred by the plaintiff for recovery of amount due towards the balance payable for the increase in price of the material supplied.

Undisputed facts are that the plaintiff supplied material in the nature of RCC Pipes and Collars to the defendants on the basis of a rate contract dated 14.10.1982 awarded to the plaintiff. The dispute is regarding the fact as to whether the plaintiff is entitled to the upward revision in prices as claimed.

***Whether the reporters of Local Papers may be allowed to see the judgement*?**

The learned District Judge, framed seven issues and on the crucial issue viz.; (1) whether the plaintiff had supplied material to the defendants or not, recorded that the facts clearly establish that there was no dispute regarding the quantum of material supplied. However, on the other crucial issues as to whether the plaintiff was entitled to the suit amount and that whether the plaintiff had no cause of action against the defendants (issues No.2 and 4) the learned trial Court held that the rate contract Ex.PW-1/A had been cancelled and the exact terms and conditions have not been incorporated in this document. The suit was held to be barred by limitation. On the letters proved on record, accepting that payment would be made by the defendant after decision in pending vigilance inquiry about the contract, the learned Court holds that these were recommendations of individual officers and cannot be construed as granting a cause of action in favour of the plaintiff or extending the period of limitation.

I have heard learned counsel for the parties and have gone through the record of the case.

The crucial point for determination is, whether the plaintiff is entitled to the suit amount as claimed. Learned counsel for the appellant has drawn my attention to certain documents on the record of the case and submits that the learned trial Court has committed grave error in ignoring this material

aspect of the case.According to him, these constituted clear and unequivocal acknowledgements/acceptance of the fact that the defendants were ready and willing to pay the revised price, but for the fact that vigilance inquiry had been instituted by the State. He refers to Ex.P-15, which is a communication addressed to the Deputy Secretary (Industries) to the Government of Himachal Pradesh by the Additional Controller of Stores, Himachal Pradesh, with a copy endorsed to the plaintiff. It accepts the facts that the payments are due to the plaintiff and a request has been made to the Deputy Secretary(Industries) to defray the amount. To the similar effect is another letter dated 7th June, 1992 (Ex.P-16) addressed by the Additional Controller of Stores, Himachal Pradesh to the Senior Private Secretary to the Industry Minister. It states:

> *"Shreeyut Farm Fresh Foods Pvt.Ltd., Bata Mandi, Zila Sirmaur ki bakaya rashi ke bare nirdesh starkta bibhag ki report ane per hi sambandhit bibhag ko diye ja sakte hain. Isliye mera apse anurodh hai ki maanneeya udyog mantri mahodai ko upkrokat sthiti se avgat karvane ki kripa Karen."*
>
> *"The details regarding the balance amount of Farm Fresh Foods Pvt.Ltd., Bata Mandi can be supplied after receiving report from the concerned department. Therefore, I request you to kindly apprise the Hon'ble Industry Minister of the position."*

Endorsement of this letter has been sent to the plaintiff. Another communication dated 12th March, 1993 (Ex.P-19) addressed to the plaintiff by the Additional Controller of Stores, Himachal Pradesh states is in clear and unequivocal terms:-

> *"I am refer to you telegram dated 1.2.93, addressed to Hon'ble Governor of H.P. Shimla, on the above noted subject.*
>
> *In this connection I am to intimate that the case files of RCC Pipes and Collars for the year 1981-82 are seized by the Vigilance Department. The matter is being further probed by the Vigilance department. Since your pending payment has been held up by the Government, therefore, as soon as the vigilance report is received in this office your case for release of pending payment will be considered. The Vigilance report is expected shortly, by the month's end".*

To similar effect is a communication dated 12th March, 1993 Ex.PW-1/D:-

> *"I am refer to you telegram dated 1.2.93, addressed to Hon'ble Governor of H.P. Shimla, on the above noted subject.*
>
> *In this connection I am to intimate that the case files of RCC Pipes and Collars for the year 1981-82 are seized by the Vigilance Department. The matter is being further probed by the Vigilance department. Since your*

> *pending payment has been held up by the Government, therefore, as soon as the vigilance report is received in this office your case for release of pending payment will be considered. The Vigilance report is expected shortly, by the month's end".*

It would be interesting to note that the Deputy Secretary (Industries) has written to the Director of Industries stating:-

> *"The Government agrees with your suggestion that the post cases should be closed by allowing payment on the rate contract rates prevailing at the relevant time. But such cases may be got decided on merits as some of them are under enquiry with the Vigilance Department."*

The other document which needs to be noticed at this stage is Ex.PW-1/C which admits the factum of the pending enquiry by Vigilance Department. It is well settled principle of law that no party can be allowed to unjustly enrich itself at the expense of the other or receive any advantage without payment of consideration. The doctrine of unjust enrichments is not accepted by any civilized system of jurisprudence. The defendants themselves having acknowledged and accepted that payment to the plaintiff was due and would be made only after clearance of the enquiry by the Vigilance Department, it cannot be held

that the suit is either barred by limitation or that there is no ground for claiming the suit amount. The learned District Judge was not correct in holding that the suit of the plaintiff was not maintainable or was barred by time. Having kept the payment in abeyance and contingent upon the result of the Vigilance Enquiry, question of invoking limitation against the plaintiff would not arise at all. A conjoint reading of the exhibits which are in the nature of official communications addressed to the plaintiff or between the departments of the State cannot be considered as a mere assurance being held out to the plaintiff, but against a condition contingent upon the fulfillment of the payment which is to be made. This Court had called for information as to whether Vigilance Report had been completed or not. Two letters, dated 28.1.2005 and 8.8.2005 have been placed on record, pursuant to the direction of this Court, stating therein that the enquiry has been closed by the Vigilance Department and the record has been sent to the Industries Department.

Learned District Judge has misdirected himself both on the law and facts of the case. The Court has not considered the evidence in its entirety and is wrong in holding that the plaintiff has neither any cause of action or the suit is barred by limitation.

In the facts and circumstances of the case, this appeal is allowed. The judgment and decree of the trial Court is quashed and set aside and the suit of the plaintiff is decreed. It is clarified that the plaintiff will be entitled only to a sum of Rs.1,63,790.84 paise representing the amount of difference in the price. There shall be no order as to costs.

September 3, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**